IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16946 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANTILAL AMBALAL PATEL

Versus

ALIEN RECOVERY OFFICER

Appearance:

1. Special Civil Application No. 16946 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MR KL PANDYA ASST.GOVERNMENT PLEADER for Respondent No. 1

MR TR MISHRA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 02/03/2005

ORAL JUDGEMENT

1. Rule. Learned advocate Mr.T.R.Mishra waives service of notice of rule on behalf of respondent No.2. Mr.K.L.Pandya, learned AGP waives service of notice of rule on behalf of respondent No.1.

2. The present petition has been preferred for quashing and setting aside the notice issued by Alien Recovery Officer, Ahmedabad dated 13th December 2004 issued under Section 200 of the Bombay Land Revenue Code which is at Annexure-A to the memo of the present compilation.

3. It is submitted by the learned counsel appearing for the petitioner that originally, a Reference (LCA) No.605 of 1994 was preferred at the behest of workman and the Labour Court, Ahmedabad vide order dated 26th April 2001 passed an award in favour of workman. It appears that it is an ex parte award. It is further submitted by learned counsel appearing for the petitioner that the present petitioner, upon whom, a recovery notice has been issued, was neve made a party to it.

4. It is further submitted by the learned counsel appearing for the petitioner that thereafter, after getting an award in favour of workman in Reference (LCA) No.605 of 1994 dated 26th April 2001, Recovery Application bearing No.1335 of 2002 was preferred under Section 33(C)(1) of the Industrial Disputes Act, 1947 dated 2nd August 2002. It is submitted by the learned counsel appearing for the petitioner that without serving any notice upon respondent No.4 therein (the name of petitioner is referred as respondent No.4 in the Recovery Application though he was not made a party in the reference), an ex parte order has been passed in the Recovery Application also in favour of workman and on the basis of the said order, notice under Section 200 of the Bombay Land Revenue Code has been issued which is at Annxure-A. As the present petitioner was never made a party in the Reference (LCA) No.605 nor the notice was served upon the present petitioner while deciding the Recovery Application preferred by the workman under Section 33(C)(1) of the Industrial Disputes Act, 1947, an application has been preferred by the present petitioner bearing Misc.Application No.281 of 2004 in Recovery Application No.1335 of 2002 before the Labour Court, Ahmedabad along with Stay Application of the order passed in Recovery Application. Both these applications are dated 24th November 2004. The case is going on before the Labour Court, Ahmedabad for modification of the order passed in Recovery Application. Next date of hearing is 9th March 2005 and, therefore, it is submitted by the

learned counsel appearing for the petitioner that the notice issued by Alien Recovery Officer, Ahmedabad dated 13th December 2004 should be stayed till the Labour Court is deciding the Misc.Application No.281 of 2004 in Recovery Application No.1355 of 2002.

5. I have heard the learned counsels appearing for respondent Nos.1 and 2. It is vehemently submitted by both the counsels that the notice issued at Annexure-A dated 13th December 2004 is a consequential action of an order passed by the Labour Court in Recovery Application No.1335 of 2002. Unless that order is modified, the notice at Annexure-A will remain intact and as it is and there must be a compliance of the order passed by the Labour Court, Ahmedabad in the said Recovery Application. Nonetheless, it is fairly admitted by the learned counsel appearing for respondent No.2 that such application is pending before the Labour Court which is preferred by the present petitioner for modification/review of the order passed in Recovery Application No.1355 of 2002.

6. In view of the aforesaid facts and circumstances of the case, as the present petitioner was not a party in Reference (LCA) No.605 of 1994 coupled with the fact that already a Misc.Application No.281 of 2004 in Recovery Application No.1335 of 2002 is pending before the Labour Court, Ahmedabad for modification of ex parte order passed in Recovery Application No.1335 of 2002, I hereby direct respondent No.1 not to implement and execute the notice at Annexure-A dated 13th December 2004 till the Misc.Application No.281 of 2004 in Recovery Application No.1335 of 2002 which is preferred by the present petitioner is decided by the Labour Court, Ahmedabad. I hereby direct the Labour Court, Ahmedabad to decide the Misc.Application No.281 of 2004 in Recovery Application No.1335 of 2002 as early as possible and practicable, preferably within a period of four weeks from the date of receipt of the writ of this Court.

7. Liberty is reserved for respondent No.2 to move this Court in case of difficulty by way of fresh application.

8. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(D.N.Patel, J.)

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